International Alliance of Theatrical Stage Employees, Local #41 *and* Greyhound Exhibitgroup, Inc. and Carpenters District Council of Atlanta[1] and Vicinity, Carpenters Local Union #2281. Case 10-CD-303

30 April 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

The charge in this Section 10(k) proceeding was filed 10 November 1983 by the Employer, alleging that the Respondent, International Alliance of Theatrical Stage Employees, Local #41 (IATSE), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by the Carpenters. The hearing was held 4 and 5 January 1984 before Hearing Officer Stephen T. Constan.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that the Company, an Illinois corporation, is engaged in the business of building exhibits for trade shows at its facility in Atlanta, Georgia, where it annually receives goods, products, and materials valued in excess of $50,000 directly from points located outside the State of Georgia. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that IATSE and the Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer began constructing and installing trade show exhibits in the Atlanta, Georgia area in January 1981 when it purchased the assets of another exhibit building company, Matrix. Prior to the purchase Matrix had entered into collective-bargaining agreements with both IATSE and the Carpenters. The Employer became a party to both agreements following its purchase of Matrix's assets. The Employer's primary business consists of constructing custom designed exhibits for trade shows, which it does at shops located in Atlanta and other cities. At all times material to the present proceeding, the Employer's Atlanta shop employees have been represented by the Carpenters. There is no dispute over the assignment of the in-shop construction work to employees represented by the Carpenters. Ancillary to its exhibit construction business, the Employer installs, maintains, and dismantles the previously constructed exhibits at trade shows. At the time when the Employer purchased the assets of Matrix, the installation, maintenance, and dismantling work was performed primarily by employees represented by IATSE. In July 1982, however, the Carpenters notified the Employer that failure to assign such work to employees represented by the Carpenters was a violation of its collective-bargaining agreement with the Employer. Thereafter, the Employer began assigning a portion of the installation and dismantling work to employees represented by the Carpenters, i.e., its own shop employees. Since 1982 the Employer has assigned some of this work to employees represented by each Union. In October and again in November 1983 an IATSE official threatened to strike the Employer if the Employer continued to assign the exhibit installation, maintenance, and dismantling work to employees represented by the Carpenters. He later confirmed this threat in a letter to the Board's Regional Office. On 10 November 1983 the Employer filed a charge alleging that IATSE had violated Section 8(b)(4)(D) of the Act by making the threats to strike.

B. *Work in Dispute*

The work in dispute involves the unpacking, assembling, maintaining, and repacking of prefabricated itinerant exhibits and/or displays for trade shows in the metropolitan Atlanta area.[2]

C. *Contentions of the Parties*

The Employer contends that the disputed work should be awarded to its employees represented by the Carpenters on the basis of their superior skills and training, economy and efficiency of operations, the respective collective-bargaining agreements, job impact, and the Employer's preference. The Carpenters takes a position consistent with that of the Employer.

[1] The name of this Union appears as amended at the hearing.

[2] It is clear from the record that the work in dispute consists of unpacking, assembling, maintaining, disassembling, and repacking trade show exhibits previously constructed by the Employer irrespective of whether the exhibits are "itinerant" in the sense of moving from one show to another.

IATSE contends that the disputed work should be assigned to employees whom it represents on the basis of industry and area practice, the Employer's past practice, and job impact. IATSE further disputes the Employer's contentions concerning economy and efficiency of operations and the relative skills of employees represented by the two Unions.

D. *Applicability of the Statute*

As noted above, an IATSE representive twice threatened to strike the Employer if the Employer continued to assign any of the disputed work to employees represented by the Carpenters. We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreements

In 1979, before the Employer purchased the assets of Matrix, the Carpenters were certified by the Board as the exclusive representative of Matrix's "shop employees." IATSE has never been certified by the Board as the exclusive representative of any of the employees of the Employer or Matrix. Because the certification of the Carpenters neither clearly includes nor clearly excludes employees who perform the disputed work and there is no relevant IATSE certification, we find that the factor of certification does not favor an award of the disputed work to employees represented by either Union.

The collective-bargaining agreement between the Employer and the Carpenters covers the Employer's "shop employees" and further provides that the jobs covered include "set-up, installation and dismantling of exhibits and exhibit materials." The current agreement between the Employer and the Carpenters is effective July 1982 through November 1984.

The collective-bargaining agreement between the Employer and IATSE covers employees who "unpack, assemble, maintain and repack pre-fabricated itinerant exhibits and/or displays for trade shows." The most recent IATSE agreement was entered into by Matrix in February 1979, before the Employer purchased the assets of Matrix. That agreement expired 1 January 1984.

Both collective-bargaining agreements arguably cover the work in dispute. However, where there are two collective-bargaining agreements both of which arguably cover disputed work, and one is in effect while the other has expired, the Board has found that this factor favors an award of the work to employees represented by the union which has the currently effective agreement with the employer.[3] Accordingly, we find that the factor of collective-bargaining agreements favors an award of the disputed work to employees represented by the Carpenters.

2. Company preference and past practice

The past practice of the Employer in assigning the disputed work is mixed. In January 1981 when the Employer purchased the assets of Matrix, initially it continued the practice of that company in assigning the disputed work to employees represented by IATSE. However, beginning in the latter half of 1982 the Employer began assigning such work to employees represented by the Carpenters. As of the time of the hearing the Employer was assigning approximately 75 percent of the disputed work to employees represented by the Carpenters and the remainder to employees represented by IATSE. In view of the fact that for a substantial period of time the Employer has assigned the disputed work to employees represented by each Union, the factor of past practice does not favor an award to either group.

At the hearing and in its brief the Employer expressed its preference that the work in dispute be performed by employees represented by the Carpenters. Accordingly, although we do not give it controlling weight, the factor of employer preference favors an award of the disputed work to employees represented by the Carpenters.

3. Relative skills

Uncontroverted evidence adduced at the hearing establishes that employees represented by the Carpenters have the skills required to perform the dis-

[3] *Longshoremen ILWU Local 54 (Hugo Neu Sales)*, 248 NLRB 775, 777 (1980).

puted work. The Employer's custom-built exhibits often require finishing or adaptation work, as well as repairs, when they are being installed and maintained on a trade show floor. The skills required to perform this work frequently include blueprint reading, woodcutting, pipefitting, and electrical work. These are skills which are also required of the employees represented by the Carpenters in their in-shop construction work. Further, since in many cases the employees represented by the Carpenters have themselves constructed exhibits which are then installed at a trade show, they have a working familiarity with the exhibits that other employees lack.

The record establishes that employees represented by IATSE, on the other hand, frequently lack some of the skills required to install and maintain exhibits. Since the employees represented by IATSE are not regular employees of the Employer and do not perform in-shop work, but are referred from a hiring hall, the skill levels of these employees vary widely. The record establishes that in some cases employees represented by IATSE have been unable to effectively read blueprints and perform exhibit repair work. Further, they are required to carry fewer and less sophisticated tools than are employees represented by the Carpenters and require closer supervision. Accordingly, we find that the factor of relative skills favors an award of the work in dispute to employees represented by the Carpenters.

4. Economy and efficiency of operations

The evidence establishes that in several respects it is more efficient for employees represented by the Carpenters to perform the disputed work than for employees representd by IATSE to perform it. Thus, the fact that employees represented by the Carpenters are able to perform extensive repair work on exhibits while those exhibits are at a trade show site saves the expense of shipping damaged exhibits back to the Employer's shop for repair. The record also establishes that the Employer's customers have sometimes expressed dissatisfaction with work performed by employees represented by IATSE, while there is no evidence of similar dissatisfaction with work performed by employees represented by the Carpenters. Further, the Employer is able to reduce the unproductive time of its regular employees by assigning them to perform the installation, maintenance, and dismantling work, while it achieves no similar cost savings when it assigns that work to employees represented by IATSE. Accordingly, we find that the factor of economy and efficiency of operations favors an award of the work in dispute to employees represented by the Carpenters.

5. Area and industry practice

The record establishes that, while employees represented by the Carpenters have sometimes performed trade show display installation, maintenance, and dismantling work in the Atlanta metropolitan area, historically such work has been performed primarily by employees represented by IATSE. Accordingly, we find that the factor of area practice favors an award of the work in dispute to employees represented by IATSE. The record contains no evidence as the industry practice outside the Atlanta area. Consequently, the factor of industry practice is not helpful in determining this dispute.

6. Job impact

The Employer contends that an award of the disputed work to employees represented by IATSE would have a negative impact on jobs available for employees represented by the Carpenters. Similarly, IATSE contends that an award of the disputed work to employees represented by the Carpenters would have an adverse job impact on employees represented by it. However, the record does not clearly establish the effect on jobs available with the Employer of an award of the work to employees represented by either Union. Accordingly, we find that the factor of job impact is not helpful in determining this dispute.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Carpenters are entitled to perform the work in dispute. We reach this conclusion relying on the fact that there is a current collective-bargaining agreement between the Employer and the Carpenters covering the work in dispute, while the agreement between the Employer and IATSE has expired; the Employer's preference is to assign the work to employees represented by the Carpenters; the Carpenters has relatively greater skills for performing the work; and an award of the disputed work to the Carpenters will promote economy and efficiency of the Employer's operations.[4] In making this determination, we are awarding the work to employees represented by the Carpenters, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

[4] We find that these factors, especially the scope of the work, employee skills, and economy and efficiency, distinguished this case from *Carpenters Local 1229 (Shepard Decorating)*, 194 NLRB 640 (1971).

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Greyhound Exhibitgroup, Inc., represented by Carpenters District Council of Atlanta and Vicinity, Carpenters Local Union #2281, are entitled to perform the work of unpacking, assembling, maintaining, and repacking of prefabricated itinerant exhibits and/or displays for trade shows in the metropolitan Atlanta area.

2. International Alliance of Theatrical Stage Employees, Local #41, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Greyhound Exhibitgroup, Inc., to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Alliance of Theatrical Stage Employees, Local #41 shall notify the Regional Director for Region 10 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.